STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

Supreme Court No. 150119
Court of Appeals No. 317054
Circuit Court No. 13-161-FH

FATEEN MUHAMMAD,

Defendant-Appellant.
_____/

PEOPLE'S SUPPLEMENTAL BRIEF ON APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF QUESTIONS PRESENTED

I. WHETHER BY SERVING DEFENDANT WITH THE HABITUAL OFFENDER NOTICE IN DISTRICT COURT PLAINTIFF COMPLIED WITH THE SPIRIT OF THE NOTICE REQUIREMENTS CONTAINED IN MCL 769.13?

Plaintiff-Appellee answers, "Yes."
Defendant-Appellant answers, "No."

II. WHETHER ANY ERROR IN COMPLIANCE WITH THE HABITUAL OFFENDER STATUTE WAS HARMLESS AND SHOULD BE EXCUSED BECAUSE DEFENDANT RECEIVED EARLY WRITTEN NOTICE THAT HE WAS CHARGED AS AN HABITUAL OFFENDER?

Plaintiff-Appellee answers, "Yes."
Defendant-Appellant answers, "No."

STATEMENT OF FACTS

Defendant was charged with Home Invasion, first degree, Assault with Intent to do Great Bodily Harm less than Murder, and habitual offender, fourth offense, for having entered without permission the home of his estranged wife and having assaulted her (which was also a violation of a Personal Protection Order). The criminal complaint was filed in the 54-A District Court on February 6, 2013.[1] That criminal complaint charged Defendant as a fourth habitual offender. Defendant was arraigned on the complaint the same day.[2] At the arraignment, the district court judge advised defendant of the charges and that "[e]ach of those has a habitual offender notice." And that "[t]he penalties could be made greater than 20 years and 10 years respectively."[3] Defendant requested a court-appointed attorney and was appointed attorney Joseph Curi.[4] Mr. Curi was provided a copy of the felony complaint containing the habitual offender notice as part of discovery. A preliminary examination was scheduled for February 15, 2013.

The preliminary examination was held on that date and Defendant was bound over to circuit court as charged.[5] A discussion regarding the amount of Defendant's bond was held on the record and the district court, in denying the request for a reduced bond, noted that "[Defendant's] a fourth habitual offender."[6] The district court judge set the circuit court arraignment for February 27, 2013.[7] **Before leaving the district court that day, Mr. Curi and Defendant signed a written waiver of circuit court**

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[1] Attachment 1.
[2] See District Court ROA, Attachment 2.
[3] Attachment 3, p 3.
[4] Attachment 3, p 4; Attachment 2, p 2.
[5] Attachment 4; Attachment 2, p 2.
[6] Preliminary Examination Tr, p 30.
[7] Attachment 4.

arraignment which acknowledged they had received a copy of the felony complaint[8] (which contained the habitual offender notice).[9]

On the circuit court arraignment date, February 27, 2013, Plaintiff filed the felony information which included the same habitual offender, fourth offense notice.[10] The felony information was identical to the felony complaint that Defendant received in district court, except with a different title.[11] The circuit court set the initial pretrial conference for March 27, 2013.[12] At the pretrial conference (which was held off the record), the attorneys for the parties signed the pretrial conference statement which noted that Defendant was charged as a fourth habitual offender.[13] Plaintiff sent Mr. Curi a copy of the felony information via email on April 24, 2013.[14]

On May 10, 2013, Defendant filed a motion to dismiss the habitual offender notice[15] asserting that it was not timely filed[16] or served. Plaintiff filed a response stating that Defendant had repeatedly been informed that Plaintiff intended to seek an enhanced sentence beginning with his arraignment in district court.[17] A hearing was held on May 29, 2013. The circuit court, Judge Rosemarie Aquilina, granted the motion because the felony information was not timely served on Mr. Curi.[18] An order to that

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[8] It appears from the waiver form that Mr. Curi crossed out the word "information" and wrote the word "complaint" when signing the waiver.
[9] Attachment 5.
[10] Attachment 6; Attachment 11, p 2.
[11] Compare Attachment 1 with Attachment 6.
[12] Attachment 11, p 2.
[13] Attachment 12. Defendant has never disputed that he is an habitual offender.
[14] Attachment 7, exhibit C.
[15] Attachment 7.
[16] As noted, the felony information was filed on the date of the circuit court arraignment, February 27, 2013. Defendant on appeal abandoned the argument that the information was not timely filed. Instead, Defendant merely asserted that it was not timely served.
[17] Attachment 8.
[18] Attachment 9, pp 11-13.

effect was entered on June 13, 2013.[19] Plaintiff appealed by application for leave from the order.

The Court of Appeals granted Plaintiff's application and the parties filed briefs. Following oral argument, the Court of Appeals reversed Judge Aquilina's order dismissing the habitual offender notice. The majority held that Plaintiff's serving Defendant with a copy of the felony information containing the habitual offender notice after the 21-day period was harmless error.[20] The dissent agreed with the rationale of the majority, however, it felt compelled to follow this Court's order in *People v Cobley,* 463 Mich 893 (2000).

Defendant filed an application for leave with this Court and Plaintiff filed a response. Plaintiff noted that the Court of Appeals had in the past repeatedly applied a harmless error analysis to service defects involving habitual offender notices. Plaintiff also noted that this Court in *People v Johnson,* 495 Mich 919 (2013) applied to a violation of the habitual offender statute the harmless error standards found in MCR 2.613 and MCL 769.26. Instead of ruling on the application for leave to appeal, this Court ordered the parties to file supplemental briefs addressing the following:

> (1) whether the defendant's acknowledgement that he received a felony complaint that contained a habitual offender notice filed in district court satisfies the requirement set forth in MCL 769.13 that the habitual offender notice be served "within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense;" and (2) if not, the proper application of the harmless error tests articulated in MCR 2.613 and MCL 769.26 to violations of the habitual offender notice requirements set forth in MCL 769.13, compare *People v Cobley,* 463 Mich 893 (2000), with *People v Johnson,* 493 Mich 919 (2013).

[19] Attachment 10.
[20] Attachment 13.

ARGUMENT

I. BY SERVING DEFENDANT WITH THE HABITUAL OFFENDER NOTICE IN DISTRICT COURT PLAINTIFF COMPLIED WITH THE SPIRIT OF THE NOTICE REQUIREMENTS CONTAINED IN MCL 769.13.

Issue Preservation

Defendant moved to dismiss the habitual offender notice on the grounds that it was not timely filed or served. Plaintiff opposed the motion to dismiss the habitual offender notice.[21] Therefore, this issue is preserved for appellate review.

Standard of Review

Whether the prosecutor has complied with the statutory requirements for habitual offenders is a question of law which this Court reviews de novo. *People v Sierb,* 456 Mich 519, 522 (1998).

People's Argument

A. History of the Habitual Offender Notice Requirement

Today, the procedural rules for charging a defendant as a habitual offender are governed by statute. Initially, however, our courts required the prosecutor to "promptly" file a felony information containing the habitual offender notice. See e.g., *People v Marshall,* 41 Mich App 66, 73 (1972). This Court in *People v Shelton,* 412 Mich 565, 569 (1982) later held that "a supplemental information is filed 'promptly' if it is filed not more than 14 days after the defendant is arraigned in circuit court (or has waived arraignment) on the information charging the underlying felony, or before trial if the defendant is tried within that 14-day period."

[21] See attachments 8 and 9.

The Legislature amended the habitual offender statutes in 1994. Under this amendment, the prosecutor was no longer required to file an information charging the defendant as a habitual offender (only a written notice was required), and the time for filing was extended from 14 days to 21 days after circuit court arraignment. *People v Morales,* 240 Mich App 571, 583 (2000).[22] It is this amended version that governs the present case.

B. The Current Habitual Offender Statute

Section 13 of the habitual offender statutes, MCL 769.13, provides the procedure for charging a defendant as a habitual offender. The section states, in relevant part:

> (1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.
>
> (2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1). The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense, or may be served in the manner provided by law or court rule for service of written pleadings. The prosecuting attorney shall file a written proof of service with the clerk of the court.

The "goal in interpreting a statute 'is to ascertain and give effect to the intent of the Legislature. The touchstone of legislative intent is the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended

[22] "The expansion of the time allotted from fourteen to twenty-one days signifies a desire to balance the credible concern of prosecutors that their ability to charge a defendant as an habitual offender not be undercut by too short a period, with the equally credible concern of defendants that they be given adequate notice to meet the charges against them." *Morales,* 240 Mich App at 584.

its plain meaning and we enforce the statute as written.'" *People v Hardy,* 494 Mich 430, 439 (2013), quoting *People v Gardner,* 482 Mich 41, 50 (2008). The purpose of the habitual offender notice is to ensure that a defendant receives notice at an early stage in the proceedings that he could be sentenced as a habitual offender. *People v Shelton,* 412 Mich 565, 569 (1982); *Morales, supra* at 582; *People v Manning,* 163 Mich App 641, 644 (1987).

MCL 769.13(1) states that "the prosecuting attorney may seek to enhance the sentence of the defendant . . . by filing a written notice of his or her intent to do so . . . ." The notice can be (and commonly is) contained in the felony information, but that is not required by the statute.[23] As noted above, Plaintiff filed the notice twice; first in the complaint in district court and later in the information in circuit court.

Next, MCL 769.13(1) requires Plaintiff to file the notice with the court "within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense." In this case, Plaintiff filed the notice (as contained in the complaint) in district court to initiate the case and again filed the same notice (as contained in the information) on the day of Defendant's circuit court arraignment. Therefore, Plaintiff more than complied with the filing requirements of subsection (1).

Next, MCL 769.13(2)) requires that the notice be "served upon the defendant or his or her attorney within the time provided in subsection (1)." The time period prescribed by subsection (1) is "within 21days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense." In this case,

[23] *Morales, supra* at 583.

Defendant waived the arraignment. Since the information was filed on the date of the arraignment, Plaintiff had 21 days from that point to serve Defendant or Mr. Curi with the notice. As noted, Plaintiff served Mr. Curi with the information (containing the second notice) after the 21-day period. However, Plaintiff had, by that point, already served Defendant with the written notice in district court. Thus, the question here is whether Plaintiff should be penalized when it served Defendant with the notice **before** it was required to do so pursuant to the statute.[24]

The Court of Appeals has said that MCL 769.13(1) provides a "bright-line test" for whether a prosecutor has "promptly" **filed** notice of intent to enhance a defendant's sentence as a habitual offender. See *Morales, supra* at 575-576; *People v Ellis,* 224 Mich App 752, 755 (1997). However, the Court of Appeals has also held that a prosecutor may amend the notice to correct errors after the expiration of the 21-day period as long as the amendment does not "increase the potential sentence consequences." *People v Hornsby,* 251 Mich App 462, 472 (2002); *Ellis, supra* at 756-757.

In the present case, Plaintiff provided Defendant with **written notice** of its intent to seek an enhanced sentence **before** his case reached circuit court. Plaintiff also timely filed the notice (within the information) in circuit court. The notice filed in circuit court was a "carbon copy" of the notice served on Defendant in district court. In other words, Plaintiff did not alter the notice in any way that would increase the potential sentence consequences to Defendant. Since defendant received written notice at the earliest possible stage in the proceedings he cannot (and does not) claim that he was prejudiced by Mr. Curi receiving a copy of the felony information after the 21-day

[24] The statute contains no penalty for not serving the defendant or his attorney within the 21-day period.

period.[25] Therefore, Plaintiff should be deemed to have complied with the intent (if not the letter) of MCL 769.13 when it provided notice to Defendant. To hold otherwise would ignore the purpose of the notice provision[26] and elevate form over substance.

[25] See *People v Walker,* 234 Mich App 299, 314-315 (1999).

[26] As noted above, the purpose of the habitual offender notice is to ensure that a defendant receives notice at an early stage in the proceedings that he could be sentenced as an habitual offender. *People v Shelton,* 412 Mich 565, 569 (1982); *Morales, supra* at 582; *People v Manning,* 163 Mich App 641, 644 (1987). Early notice permits the defendant sufficient time to decide whether to plead guilty or proceed to trial.

II. ANY ERROR IN COMPLIANCE WITH THE HABITUAL OFFENDER STATUTE WAS HARMLESS AND SHOULD BE EXCUSED BECAUSE DEFENDANT RECEIVED EARLY WRITTEN NOTICE THAT HE WAS CHARGED AS AN HABITUAL OFFENDER.

Defendant asserted in the trial court, and the trial court relied upon, this Court's order in *People v Cobley,* 463 Mich 893 (2000). In that case, the prosecutor at the circuit court arraignment **verbally** notified the defendant for the first time that he intended to file a supplemental information charging the defendant has an habitual offender. The prosecutor filed the supplemental information timely, however, he failed to serve the defendant with a copy within the time required by MCL 769.13. The Court of Appeals found that the error was harmless because the defendant had actual knowledge of the prosecutor's intent and because the supplemental information was timely filed.[27]

This Court reversed that decision and remanded for resentencing without the habitual offender notice "because the prosecutor has not proven that the **notice of sentence enhancement was served on defendant within 21 days** after the defendant was arraigned." *Id.* (emphasis added). This Court's order did not consider whether the error was harmless.

Plaintiff asserts that the facts in the present case are distinguishable from those in *Cobley.* Moreover, if serving Mr. Curi with a copy of the felony information containing the habitual offender notice after the 21-day period was error (considering the previous service to him in district court), such error was harmless and cannot be grounds to

[27] *People v Cobley,* unpublished opinion per curiam of the Court of Appeals, decided April 20,1999 (Docket No. 204155) (See Attachment 7, exhibit D).

dismiss the notice. The present case is distinguishable from *Cobley* because the defendant in *Cobley* was not served with written notice that he was being charged as an habitual offender until more than 21 days after the circuit court arraignment. In the present case, Defendant was served in district court with a copy of the complaint containing the habitual offender notice. In light of this significance difference, the trial court erred in relying on *Cobley* to dismiss the habitual offender notice in the present case.

Since this Court issued its *Cobley* order, the Court of Appeals has repeatedly found that service defects regarding habitual offender notices can be harmless error. As an example, the defendant in *People v Hardwick,*[28] argued that his habitual offender sentence must be vacated because he was never served with a copy of the felony information containing the habitual offender notice. The Court of Appeals rejected that argument finding that the complaint and warrant, on which the defendant was arraigned in district court, contained the habitual offender notice, as did the felony information that was timely filed in circuit court. The Court of Appeals stated, "[u]nder these circumstances, we decline to vacate defendant's habitual offender sentence." Slip op, p 2.

Similarly, the defendant in *People v Bouie,*[29] argued that his habitual offender sentence must be vacated because the prosecutor did not timely file notice of intent to seek an enhanced sentence. The Court of Appeals rejected that argument finding that the complaint and warrant, (on which the defendant was arraigned in district court)

[28] *People v Hardwick,* Memorandum opinion of the Court of Appeals, decided August 9, 2002 (Docket No. 231393) (Attachment 13).
[29] *People v Bouie,* Memorandum opinion of the Court of Appeals, decided October 11, 2002 (Docket No. 232963) (Attachment 14).

contained the habitual offender notice. The Court of Appeals also noted that the defendant waived circuit court arraignment by signing a form which acknowledged that he had received a copy of the felony information (which contained the habitual offender notice).[30]

This Court also applied a harmless error analysis in *People v Johnson,* 495 Mich 919 (2013). In that case, the prosecution filed a felony information in circuit court. The same day the prosecutor filed a supplemental information that contained a habitual offender notice. The defendant was arraigned on the supplemental information 15 days later.[31] The prosecutor later realized that the dates and convictions noted in the habitual offender notice were incorrect. The prosecutor moved to amend the information to list the correct dates and convictions and the defendant objected. The prosecutor ultimately filed the amended supplemental information (after the 21-day period) even though, as this Court noted, there was no record of the trial court issuing an order granting the motion.[32] On appeal, the defendant argued the trial court erred in sentencing him as fourth habitual offender because the amended supplemental information was filed after the 21-day period. The Court of Appeals affirmed the defendant's sentence as an habitual offender stating:

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[30] See also *People v Walker,* 234 Mich App 299, 314 (1999) (prosecutor's failure to file proof of service of habitual offender notice was harmless error when the defendant was properly served with the notice).

[31] Neither the Court of Appeals nor this Court addressed the fact that the supplemental information containing the habitual offender notice was filed prematurely, at least according to the strict language of MCL 769.13(1) which states that when the defendant is actually arraigned in circuit court the habitual offender notice must be filed "within 21 days **after** the defendant's arraignment on the information charging the underlying offense . . . ." (emphasis added). The current version of the statute does not envision that the information (on which the defendant was arraigned), might also contain the habitual offender notice, even though that is a common practice. Nonetheless, no one would argue that **early filing** of the habitual offender notice in any way invalidated the notice. The result should be the same when the notice is **early served.**

[32] The defendant's status as a fourth habitual offender was unchanged.

> We find the instant case to be analogous to [*People v Manning,* 163 Mich App 641 (1987)],[33] where this Court determined that the trial court did not err in allowing the prosecutor to file an amended information that corrected the convictions underlying the defendant's status as a fourth habitual offender. *Manning,* 163 Mich App at 644-645. Similar to the *Manning* defendant, Johnson was given sufficient notice of the prosecutor's intent to seek sentencing enhancement, satisfying the primary purpose of MCL 769.13(2). Consequently, we find no error.
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> This Court also affirmed in an order stating:
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> Defendant was given timely notice of his enhancement level and had sufficient prior convictions to support a fourth habitual enhancement. Relief is barred by MCL 769.26 because there was no miscarriage of justice when the trial court allowed the prosecution to amend the notice to correct the convictions or when it sentenced defendant as a fourth habitual offender. In addition, affirming defendant's sentence as a fourth habitual offender is not inconsistent with substantial justice. MCR 2.613(A).

Plaintiff's position is that this Court in *Johnson* appropriately applied the harmless error rule to the application of the habitual offender statute. Plaintiff makes that assertion based on the following.

The 21-Day Window is an Arbitrary Statutory Rule

"In a criminal case, due process generally requires reasonable notice of the charge and an opportunity to be heard." *People v McGee,* 258 Mich App 683, 699 (2003). "[T]o establish a due process violation, a defendant must prove prejudice to his defense." *Id.* A technical defect in compliance with the habitual offender statute does not violate due process if the defendant received actual notice of being charged as an habitual offender. *People v Walker,* 234 Mich App 299, 314-315 (1999).

As noted above, the habitual offender statute initially did not provide a period in which the notice/supplemental information must be filed. Our courts imposed a requirement that the notice be filed "promptly." This Court later defined "promptly" as

[33] Overruled in part on other grounds *People v Bailey,* 483 Mich 905 (2009).

filing the notice within 14 days of circuit court arraignment. As noted, the Legislature later extended the notice period to 21 days. This 21-day period is arbitrary in the sense that it is not mandated as a matter of due process.[34] Also, the Legislature could have drafted the statute to require the prosecutor to file a habitual offender notice when the complaint and warrant are filed in district court. Or, the Legislature could have authorized filing the notice 30 or 60 days after the circuit court arraignment. That being the case, the current 21-day window is nothing more than an arbitrary period that was selected by the Legislature. Since the 21-day window is merely a creation of statute, not the constitution, it is significant that the Legislature has provided no penalty for failure to comply with that mandate. Plaintiff asserts that since the 21-day window is a product of legislation and not a constitutional mandate this Court should not impose a stark penalty (dismissal of the habitual offender notice) that the Legislature did not impose, and, instead, the Court should apply a harmless error analysis, which is especially appropriate under the facts of the present case.

The remedy for violating a statute "is a question of statutory interpretation and thus one of legislative intent." *People v Stevens,* 460 Mich 626, 643 (1999). This Court has frequently declined to impose a penalty for a statutory violation when the Legislature has declined to do so. See e.g., *Stevens, supra* (violation of the Michigan knock and announce statute does not warrant suppression of evidence); *People v Sobczak-Obetts,* 463 Mich 687 (2001) (violation of Michigan search warrant statute by the officer's failure to leave a copy of the search warrant affidavit with the defendant at time search warrant is executed does not warrant suppression of evidence); *People v*

[34] This Court has never ruled that the Legislature's extending the period from 14 to 21 days was somehow invalid.

Hamilton, 465 Mich 526 (2002) (officer's conducting an arrest outside his statutory geographic jurisdiction did not invalidate the arrest).

Despite the lack of a penalty provision, our courts have long imposed the harsh penalty of dismissal for violations of the various provisions in the habitual offender statute. If that practice is not subject to change then this Court should expressly adopt the use of a harmless error analysis in appropriate cases.[35]

This Court in *Johnson, supra,* denied the defendant relief finding that it was barred by MCL 769.26 and MCR 2.613(A). MCL 769.26 is not applicable to the present case because, this being an interlocutory appeal, no judgment or verdict has been set aside, nor has the trial court granted the defendant a new trial. However, as this Court recognized in *Johnson,* the statute could be applicable in a given case if the defendant contested his habitual offender status after sentencing.

A restrictive, punitive approach to violations of the habitual offender notice provisions is contrary to the Legislature's very explicit preference that criminal judgments are not to be set aside for error as to any matter of pleading or procedure. MCL 769.26 states:

> No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of **has resulted in a miscarriage of justice.** [emphasis added].

Obviously, a defect in the filing or service of a habitual offender notice is an "error as to any matter of pleading or procedure" to which MCL 769.26 must be applied before

[35] Plaintiff expresses no position as to the extent of the use of a harmless error rule except to say that the present case, in light of the early notice to Defendant, is an appropriate place to apply the rule if necessary.

a judgment (i.e. sentence) is set aside. As this Court in *People v Lukity,* explained, 769.26 creates a *presumption* that an error is harmless, and that the burden to rebut that presumption is on the defendant.[36] There is nothing in 769.26, or any other statute, which excludes its application to the filing and service of habitual offender notices. Therefore, the "miscarriage of justice" standard must be applied to any situation where a defendant seeks to set aside a sentence based on an alleged violation of MCL 769.13.

In a similar rule,[37] MCR 2.613(A), this Court stated:

> An error in the admission or exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court **inconsistent with substantial justice.** [emphasis added].

Again, this rule does not apply to the present case because the trial court did not set aside a verdict or vacate an existing order or judgment based on the service date of the habitual offender notice. However, the rule must be applied in a case where the trial court vacates a sentence (a judgment) due to a "defect" in the filing or service of an habitual offender notice. Again, there is nothing in the rule or any other rule that precludes its application to such situations.

Lastly, Plaintiff asserts that since the 21-day window is a legislative enactment and not constitutionally required, due process, and not the statute, is the controlling factor in deciding whether a harmless error test should be applied to violations of the statutory mandates. If a defendant has received due process (reasonable notice and an

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[36] *People v Lukity,* 460 Mich 484, 493-496 (1999).

[37] The statute and court rule are different articulations of the same concept. *People v Williams,* 483 Mich 226, 232 (2009). An "error is not grounds for reversal unless, after an examination of the entire case, it affirmatively appears that it is more probable than not that the error was outcome determinative." *Id.* at 243.

opportunity to be heard) it would be the rare case where the error was not harmless pursuant to MCL 769.26 and MCR 2.613(A).

Conclusion

In the present case, the procedural history is not in question. The habitual offender notice was placed in the felony complaint that was filed to initiate the case. Defendant was arraigned on that complaint and the district court informed him on the record that he was charged as an habitual offender. Defendant was bound over to circuit court following a preliminary examination and he and Mr. Curi signed a written waiver of circuit court arraignment which stated that they had received a copy of the felony complaint (which contained the habitual offender notice). Moreover, the district court stated on the record that Defendant was charged as an habitual fourth offender. Plaintiff timely filed with the circuit court the felony information (which was nothing more than the complaint with a different title) on the date of the circuit court arraignment. Thus, Defendant had actual, written notice that he was charged as an habitual fourth offender from the very onset of the case. In essence, Plaintiff could not have provided Defendant with more notice than what he actually received. This situation is the perfect occasion to apply a harmless error analysis (assuming this Court finds that Plaintiff failed to comply with the statute in the first place).

RELIEF REQUESTED

WHEREFORE, The People request that this Honorable Court deny Defendant's application for leave to appeal.

Respectfully submitted,

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Dated: 5/14/15

CERTIFICATE OF SERVICE

On May 14, 2015, I served a copy of the People's Supplemental Brief on Application for Leave to Appeal by first class mail addressed to Defendant's appellate counsel:

Joseph D. Curi
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I declare that the statements above are true to the best of my knowledge, information, and belief.

Lisa Renee Davis